

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Sapolin Paints, Inc. :
for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of Corporation :
Franchise Tax under Article 9A of the Tax Law for :
the Year 1970. :
_____ :

AFFIDAVIT OF MAILING

State of New York
County of Albany

Kathy Pfaffenbach, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 10th day of January, 1983, he served the within notice of Decision by certified mail upon Sapolin Paints, Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Sapolin Paints, Inc.
201 E. 42nd St.
New York, NY 10017

and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this
10th day of January, 1983.

Kathy Pfaffenbach

Jean Q. Schultz

AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

STATE OF NEW YORK

STATE TAX COMMISSION

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AFFIDAVIT OF MAILING
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State of New York
County of Albany

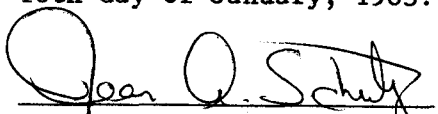
Kathy Pfaffenbach, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 10th day of January, 1983, he served the within notice of Decision by certified mail upon James E. Mullin the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

James E. Mullin
Hardman & Cranstoun
140 Broadway
New York, NY

and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the representative of the petitioner herein and that the address set forth on said wrapper is the last known address of the representative of the petitioner.

Sworn to before me this
10th day of January, 1983.



AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174



STATE OF NEW YORK
STATE TAX COMMISSION
ALBANY, NEW YORK 12227

January 10, 1983

Sapolin Paints, Inc.
201 E. 42nd St.
New York, NY 10017

Gentlemen:

Please take notice of the Decision of the State Tax Commission enclosed herewith.

You have now exhausted your right of review at the administrative level. Pursuant to section(s) 1090 of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within 4 months from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to:

NYS Dept. Taxation and Finance
Law Bureau - Litigation Unit
Albany, New York 12227
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
James E. Mullin
Hardman & Cranstoun
140 Broadway
New York, NY
Taxing Bureau's Representative

STATE TAX COMMISSION

The petitioner then commenced a proceeding under Article 78 of the Civil Practice Law and Rules to review the determination of the State Tax Commission. On December 16, 1976, the Appellate Division of Supreme Court, Third Department annulled the determination of the State Tax Commission. Matter of Sapolin Paints, Inc. v. Tully, 55 A.D.2d 759. On May 31, 1978, the Court of Appeals of New York modified the judgment of the Appellate Division and remitted the matter to Supreme Court, Albany County, with directions to remand to the State Tax Commission for further proceedings in accordance with Matter of Montauk Improvement,

Inc. v. Proccacino, 41 N.Y.2d 913. Matter of Sapolin Paints, Inc. v. Tully, 44 N.Y.2d 863. Therefore, in accordance with the directions of the Court of Appeals of New York, the State Tax Commission makes the following findings of fact and conclusions of law based on evidence previously presented by the petitioner.

FINDINGS OF FACT

1. Petitioner, Sapolin Paints, Inc. (hereinafter, Sapolin), in the year at issue, was a New York corporation whose principal business activity was the manufacture of paint and varnishes. It sold its products directly to retailers and to wholesale distributors, including two wholly owned subsidiaries, Woolsey Marine Industries, Inc. and Kimberly Chemicals, Inc.

2. Hydraposit Applications, Inc. (hereinafter, Hydraposit), in the year at issue, was a wholly owned subsidiary of Sapolin located at 321 Meadow Road, Edison, New Jersey, a Sapolin warehouse used to store Sapolin paints. Hydraposit's primary business activity involved the franchising of a spray painting service to painting contractors, hardware stores and paint stores and the leasing of spray painting equipment to its franchisees. Hydraposit's gross receipts for 1970 consisted primarily of rents and royalties received from franchisees for the use of the spray painting equipment.

3. Hydraposit, after a period of operation as a division of Sapolin, was incorporated in New Jersey on January 15, 1970 as a wholly owned subsidiary of Sapolin. The reason for incorporation was to limit the potential liability of Sapolin since the spray painting equipment sprayed paint at enormous pressures of thousands of pounds per square inch and could cause serious injury.

4. Though the franchise agreement did not specify which paint should be used, in all advertising and publicity, the name Hydraposit never appeared

without Sapolin with it. In addition, very few other paints could be used in the spraying equipment without clogging it up. Applicators wore uniforms with an emblem on the back which said "Sapolin and Hydraposit", and Sapolin guaranteed the durability of its paint for five years when applied by Hydraposit spraying equipment.

5. The executives of Hydraposit were also executives of Sapolin. They devoted most of their time to Sapolin, and part of their time to Hydraposit. The general operations manager of Hydraposit had been the industrial paint manager for Sapolin. Hydraposit did not pay any wages. Wages were paid by Sapolin and an inter-company charge was made to Hydraposit.

6. Hydraposit did not have a sales force of its own. Sapolin sold the Hydraposit system to its existing paint dealers. The system was also sold to prospective dealers of Sapolin paint. Ralph Pepper, who was the vice-president and treasurer of Sapolin and treasurer of Hydraposit, testified that the Hydraposit franchising program was developed as a way to sell more Sapolin paint.

CONCLUSIONS OF LAW

A. That Tax Law section 211.4 provides:

"In the discretion of the tax commission, any taxpayer, which owns or controls either directly or indirectly substantially all the capital stock of one or more other corporations... may be required or permitted to make a report on a combined basis covering any such other corporations and setting forth such information as the tax commission may require... provided, further, that no combined report covering any corporation not a taxpayer shall be required unless the tax commission deems such a report necessary, because of inter-company transactions or some agreement, understanding, arrangement or transaction referred to in subdivision five of this section, in order to properly reflect the tax liability under this article."

B. That the regulations effective during the year at issue, 20 NYCRR 5.28, provided in pertinent part:

"In determining whether, in a case where the test of stock ownership or control is met, the tax will be computed on the basis of a combined report, the State Tax Commission will consider various factors, including the following: (1) whether the corporations are engaged in the same or related lines of business; (2) whether any of the corporations are in substance merely departments of a unitary business conducted by the entire group; (3) whether the products of any of the corporations are sold to or used by any of the other corporations; (4) whether any of the corporations perform services for, or lend money to, or otherwise finance or assist in the operations of, any of the other corporations; (5) whether there are other substantial intercompany transactions among the constituent corporations."

C. That petitioner and Hydraposit were engaged in related businesses; Hydraposit was in substance a department of petitioner's unitary business by virtue of the tight managerial and fiscal control exerted by petitioner over it; and, the extensive administrative services rendered by petitioner to Hydraposit fulfilled the fourth factor of the regulation. Finally, notwithstanding that Hydraposit did not purchase paint directly from petitioner, the paramount reason for the creation of the Hydraposit operation was to sell more Sapolin paint (see Findings of Fact "4" and "6"). See Petition of American International Group, et al., State Tax Commission, July 3, 1981, where the sole business activity of each of two subsidiaries and the singular purpose for organizing a third subsidiary were so related to the parent corporation that combined reports were permitted. This matter may be distinguished from the Petition of Montauk Improvement, Inc., et al., State Tax Commission, September 28, 1979, where the petitioners, in addition to their failure to show that there were substantial intercorporate transactions between them, did not show that they were parts of a unitary business.

D. That, therefore, the petition of Sapolin Paints, Inc. is hereby granted, and the Notice of Deficiency issued on April 16, 1973 in the amount of \$9,978.00 is cancelled.

DATED: Albany, New York

JAN 10 1983

STATE TAX COMMISSION

ACTING

PRESIDENT

COMMISSIONER

COMMISSIONER

TA 26 (9-79)

STATE OF NEW YORK

State Tax Commission

TAX APPEALS BUREAU

STATE CAMPUS

ALBANY, N. Y. 12227

[Handwritten signature]
NOT DELIVERED
UNDELIVERABLE
NEW YORK, N. Y. 10017

ADDRESS
10017

Sapolin Paints, Inc.
201 E. 42nd St.
New York, NY 10017

17250
B'n'y

undeliverable As Add.

1726

72A

11/3/83

10001

FORWARDED

Corp-Tax

TA-36 (9/76)

State of New York - Department of Taxation and Finance
Tax Appeals Bureau

REQUEST FOR BETTER ADDRESS

Requested Appeals Bureau Room 107 - Bldg. #9 State Campus Albany, New York 12227	Unit Tax Appeals Bureau Room 107 - Bldg. #9 State Campus Albany, New York 12227	Date of Request 1-20-83
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Please find most recent address of taxpayer described below; return to person named above.

Social Security Number 0 0017430	Date of Petition F- 1-10-83
Name SAPOLIN PAINTS INC. (132 1262880) SS ID	
Address 201 E 42 St New York, N.Y. 10017	

Results of search by Files

<input type="checkbox"/> New address:	N/E AR full 1/21/83
<input type="checkbox"/> Same as above, no better address	
<input type="checkbox"/> Other:	

Searched by	Section	Date of Search

PERMANENT RECORD

FOR INSERTION IN TAXPAYER'S FOLDER

STATE OF NEW YORK
STATE TAX COMMISSION
ALBANY, NEW YORK 12227

January 10, 1983

Sapolin Paints, Inc.
201 E. 42nd St.
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Very truly yours,

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DATED: Albany, New York

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